

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE FEBRUARY 11, 2013

SENATE BILL

No. 57

Introduced by ~~Senators Lieu and Rubio~~ Senator Lieu

January 7, 2013

An act to *amend Sections 3000.08 and 3451 of, and to add Sections 3010.10 and 3466 to*, the Penal Code, relating to electronic monitoring.

LEGISLATIVE COUNSEL'S DIGEST

SB 57, as amended, Lieu. Electronic monitoring: removing or disabling GPS device: offense.

Existing law, as amended by Proposition 83, adopted at the November 7, 2006, statewide general election, requires the Department of Corrections and Rehabilitation to monitor sex offenders using a global positioning system (GPS). With regard to all other offenders, existing law ~~permits county probation departments and the Department of Corrections and Rehabilitation to use electronic or GPS monitoring to electronically monitor the whereabouts of individuals on probation and parole, respectively~~ *parole*. Under existing law, a ~~probationer or parolee~~ who fails to comply with the rules or conditions for the use of electronic monitoring as a supervision tool may be found guilty of violating the terms of his or her ~~probation or parole, respectively~~.

This bill would ~~provide that the unauthorized removal, as specified, of~~ *prohibit a person who is required to register as a sex offender and who is subject to parole supervision from removing, as specified,* an electronic, GPS, or other monitoring device affixed as a condition of ~~parole or postrelease community supervision is an offense punishable by imprisonment in the state prison for 16 months, 2 years, or 3 years.~~

parole. The bill would require, upon a first violation, the parole authority to revoke the person's parole and impose a mandatory, 180-day period of incarceration, to be served in actual custody. The bill would require, upon a 2nd violation, the parole authority to revoke the person's parole and impose a mandatory, 365-day period of incarceration, to be served in actual custody. The bill would further provide that, upon a 3rd or subsequent violation, the person is guilty of a felony, punishable by 16 months, 2 years, or 3 years in the state prison and, after serving a prison term for that offense, would subject the person to parole supervision by the Department of Corrections and Rehabilitation.

Proposition 83 provides that any amendment of its provisions by the Legislature requires a $\frac{2}{3}$ vote of the membership of each house unless the amendments expand the scope of its application or increase the punishments or penalties provided, in which case the Legislature may amend its provisions by a statute passed by a majority vote of each house.

Because this bill increases the punishments or penalties provided in Proposition 83, this bill would require a majority vote.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3000.08 of the Penal Code, as amended
- 2 by Section 35 of Chapter 43 of the Statutes of 2012, is amended
- 3 to read:
- 4 3000.08. (a) Persons released from state prison prior to or on
- 5 or after July 1, 2013, after serving a prison term or, whose sentence
- 6 has been deemed served pursuant to Section 2900.5, for any of the
- 7 following crimes shall be subject to parole supervision by the
- 8 Department of Corrections and Rehabilitation and the jurisdiction
- 9 of the court in the county where the parolee is released or resides

1 for the purpose of hearing petitions to revoke parole and impose
2 a term of custody:

3 (1) A serious felony as described in subdivision (c) of Section
4 1192.7.

5 (2) A violent felony as described in subdivision (c) of Section
6 667.5.

7 (3) A crime for which the person was sentenced pursuant to
8 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)
9 of subdivision (c) of Section 1170.12.

10 (4) Any crime where the person eligible for release from prison
11 is classified as a High Risk Sex Offender.

12 (5) Any crime where the person is required, as a condition of
13 parole, to undergo treatment by the Department of Mental Health
14 pursuant to Section 2962.

15 (6) *A violation of paragraph (3) of subdivision (c) of Section*
16 *3010.10.*

17 (b) Notwithstanding any other provision of law, all other
18 offenders released from prison shall be placed on postrelease
19 supervision pursuant to Title 2.05 (commencing with Section
20 3450).

21 (c) At any time during the period of parole of a person subject
22 to this section, if any parole agent or peace officer has probable
23 cause to believe that the parolee is violating any term or condition
24 of his or her parole, the agent or officer may, without warrant or
25 other process and at any time until the final disposition of the case,
26 arrest the person and bring him or her before the court, or the court
27 may, in its discretion, issue a warrant for that person's arrest
28 pursuant to Section 1203.2.

29 (d) Upon review of the alleged violation and a finding of good
30 cause that the parolee has committed a violation of law or violated
31 his or her conditions of parole, the supervising parole agency may
32 impose additional and appropriate conditions of supervision,
33 including rehabilitation and treatment services and appropriate
34 incentives for compliance, and impose immediate, structured, and
35 intermediate sanctions for parole violations, including flash
36 incarceration in a county jail. Periods of "flash incarceration," as
37 defined in subdivision (e) are encouraged as one method of
38 punishment for violations of a parolee's conditions of parole.
39 Nothing in this section is intended to preclude referrals to a reentry
40 court pursuant to Section 3015.

(e) “Flash incarceration” is a period of detention in county jail due to a violation of a parolee’s conditions of parole. The length of the detention period can range between one and 10 consecutive days. Shorter, but if necessary more frequent, periods of detention for violations of a parolee’s conditions of parole shall appropriately punish a parolee while preventing the disruption in a work or home establishment that typically arises from longer periods of detention.

(f) If the supervising parole agency has determined, following application of its assessment processes, that intermediate sanctions up to and including flash incarceration are not appropriate, the supervising parole agency shall, pursuant to Section 1203.2, petition the court in the county in which the parolee is being supervised to revoke parole. At any point during the process initiated pursuant to this section, a parolee may waive, in writing, his or her right to counsel, admit the parole violation, waive a court hearing, and accept the proposed parole modification or revocation. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of parole, the circumstances of the alleged underlying violation, the history and background of the parolee, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports. Upon a finding that the person has violated the conditions of parole, the court shall have authority to do any of the following:

(1) Return the person to parole supervision with modifications of conditions, if appropriate, including a period of incarceration in county jail.

(2) Revoke parole and order the person to confinement in the county jail.

(3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court’s discretion.

(g) Confinement pursuant to paragraphs (1) and (2) of subdivision (f) shall not exceed a period of 180 days in the county jail.

(h) Notwithstanding any other provision of law, in any case where Section 3000.1 or paragraph (4) of subdivision (b) of Section 3000 applies to a person who is on parole and the court determines that the person has committed a violation of law or violated his or

1 her conditions of parole, the person on parole shall be remanded
2 to the custody of the Department of Corrections and Rehabilitation
3 and the jurisdiction of the Board of Parole Hearings for the purpose
4 of future parole consideration.

5 (i) Notwithstanding subdivision (a), any of the following persons
6 released from state prison shall be subject to the jurisdiction of,
7 and parole supervision by, the Department of Corrections and
8 Rehabilitation for a period of parole up to three years or the parole
9 term the person was subject to at the time of the commission of
10 the offense, whichever is greater:

11 (1) The person is required to register as a sex offender pursuant
12 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part
13 1, and was subject to a period of parole exceeding three years at
14 the time he or she committed a felony for which they were
15 convicted and subsequently sentenced to state prison.

16 (2) The person was subject to parole for life pursuant to Section
17 3000.1 at the time of the commission of the offense that resulted
18 in a conviction and state prison sentence.

19 (j) Parolees subject to this section who have a pending
20 adjudication for a parole violation on July 1, 2013, shall be subject
21 to the jurisdiction of the Board of Parole Hearings. Parole
22 revocation proceedings conducted by the Board of Parole Hearings
23 prior to July 1, 2013, if reopened on or after July 1, 2013, shall be
24 subject to the jurisdiction of the Board of Parole Hearings.

25 (k) Except as described in subdivision (c), any person who is
26 convicted of a felony that requires community supervision and
27 who still has a period of state parole to serve shall discharge from
28 state parole at the time of release to community supervision.

29 (l) This section shall become operative on July 1, 2013.

30 **SECTION 1.**

31 *SEC. 2.* Section 3010.10 is added to the Penal Code, to read:

32 3010.10. (a) A person who ~~willfully removes or disables, is~~
33 *required to register as a sex offender pursuant to Section 290 shall*
34 *not remove or disable, or willfully permits permit* another to
35 remove or disable, an electronic, global positioning system (GPS),
36 or other monitoring device affixed to his or her ~~person, knowing~~
37 *person as a condition of parole, when he or she knows that the*
38 *device was affixed as a condition of parole, is guilty of a felony,*
39 *punishable by imprisonment in the state prison for 16 months, two*
40 *years, or three years. parole.*

~~(b) Except as provided in subdivision (c), a person who willfully removes or disables an electronic, GPS, or other monitoring device affixed to the person of another, knowing that the device was affixed as a condition of parole, is guilty of a felony, punishable by imprisonment in the state prison for 16 months, two years, or three years.~~

~~(e)~~

(b) (1) This section shall not apply to the removal or disabling of an electronic, GPS, or other monitoring device by a physician, emergency medical services technician, or by any other emergency response or medical personnel when doing so is necessary during the course of medical treatment of the person subject to the electronic, GPS, or other monitoring device.

(2) This section shall not apply where the removal or disabling of the electronic, GPS, or other monitoring device is authorized or required by a court, or by the law enforcement, probation, parole authority, or other entity responsible for placing the electronic, GPS, or other monitoring device upon the person, or that has, at the time, the authority and responsibility to monitor the electronic, GPS, or other monitoring device.

(c) *Punishment for a violation of this section shall be as follows:*

(1) *Upon a first violation, the parole authority shall revoke the person's parole and require that he or she be incarcerated in the county jail for a period of 180 days. Notwithstanding any other law, a person who has had his or her parole revoked pursuant to this paragraph shall not be entitled to earn any time credits, including, but not limited to, those described in Section 4019, and shall be required to serve the entire 180-day period in actual custody.*

(2) *Upon a second violation, the parole authority shall revoke the person's parole and require that he or she be incarcerated in the county jail for a period of 365 days. Notwithstanding any other law, a person who has had his or her parole revoked pursuant to this paragraph shall not be entitled to earn any time credits, including, but not limited to, those described in Section 4019, and shall be required to serve the entire 365-day period in actual custody.*

(3) *Upon a third or subsequent violation, the person shall be guilty of a felony, punishable by imprisonment in the state prison for 16 months, two years, or three years.*

1 ~~SEC. 2. Section 3466 is added to the Penal Code, to read:~~

2 ~~3466. (a) A person who willfully removes or disables, or~~
3 ~~willfully permits another to remove or disable, an electronic, global~~
4 ~~positioning system (GPS), or other monitoring device affixed to~~
5 ~~his or her person, knowing that the device was affixed as a~~
6 ~~condition of postrelease community supervision, is guilty of a~~
7 ~~felony, punishable by imprisonment in the state prison for 16~~
8 ~~months, two years, or three years.~~

9 ~~(b) Except as provided in subdivision (c), a person who willfully~~
10 ~~removes or disables an electronic, GPS, or other monitoring device~~
11 ~~affixed to the person of another, knowing that the device was~~
12 ~~affixed as a condition of postrelease community supervision, is~~
13 ~~guilty of a felony, punishable by imprisonment in the state prison~~
14 ~~for 16 months, two years, or three years.~~

15 ~~(c)~~

16 ~~—(1) This section shall not apply to the removal or disabling of~~
17 ~~an electronic, GPS, or other monitoring device by a physician,~~
18 ~~emergency medical services technician, or by any other emergency~~
19 ~~response or medical personnel when doing so is necessary during~~
20 ~~the course of medical treatment of the person subject to the~~
21 ~~electronic, GPS, or other monitoring device.~~

22 ~~(2) This section shall not apply where the removal or disabling~~
23 ~~of the electronic, GPS, or other monitoring device is authorized~~
24 ~~or required by a court of law, or by the law enforcement, probation,~~
25 ~~parole authority, or other entity responsible for placing the~~
26 ~~electronic, GPS, or other monitoring device upon the person, or~~
27 ~~that has, at the time, the authority and responsibility to monitor~~
28 ~~the electronic, GPS, or other monitoring device.~~

29 *SEC. 3. Section 3451 of the Penal Code is amended to read:*

30 ~~3451. (a) Notwithstanding any other law and except for persons~~
31 ~~serving a prison term for any crime described in subdivision (b),~~
32 ~~all persons released from prison on and after October 1, 2011, or,~~
33 ~~whose sentence has been deemed served pursuant to Section 2900.5~~
34 ~~after serving a prison term for a felony shall, upon release from~~
35 ~~prison and for a period not exceeding three years immediately~~
36 ~~following release, be subject to community supervision provided~~
37 ~~by a county agency designated by each county's board of~~
38 ~~supervisors which is consistent with evidence-based practices,~~
39 ~~including, but not limited to, supervision policies, procedures,~~

1 programs, and practices demonstrated by scientific research to
2 reduce recidivism among individuals under postrelease supervision.

3 (b) This section shall not apply to any person released from
4 prison after having served a prison term for any of the following:

5 (1) A serious felony described in subdivision (c) of Section
6 1192.7.

7 (2) A violent felony described in subdivision (c) of Section
8 667.5.

9 (3) A crime for which the person was sentenced pursuant to
10 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)
11 of subdivision (c) of Section 1170.12.

12 (4) Any crime where the person eligible for release from prison
13 is classified as a High Risk Sex Offender.

14 (5) Any crime where the person is required, as a condition of
15 parole, to undergo treatment by the State Department of State
16 Hospitals pursuant to Section 2962.

17 (6) *A violation of paragraph (3) of subdivision (c) of Section*
18 *3010.10.*

19 (c) (1) Postrelease supervision under this title shall be
20 implemented by a county agency according to a postrelease strategy
21 designated by each county's board of supervisors.

22 (2) The Department of Corrections and Rehabilitation shall
23 inform every prisoner subject to the provisions of this title, upon
24 release from state prison, of the requirements of this title and of
25 his or her responsibility to report to the county agency responsible
26 for serving that inmate. The department shall also inform persons
27 serving a term of parole for a felony offense who are subject to
28 this section of the requirements of this title and of his or her
29 responsibility to report to the county agency responsible for serving
30 that parolee. Thirty days prior to the release of any person subject
31 to postrelease supervision by a county, the department shall notify
32 the county of all information that would otherwise be required for
33 parolees under subdivision (e) of Section 3003.

34 ~~SEC. 3.~~

35 *SEC. 4.* No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

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